

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANISATION,

Plaintiff,

v.

TOSHIBA AMERICA INFORMATION
SYSTEMS, INC., et al.,

Defendants.

§ Case No. 6:06-CV-550 (LED)

§ Jury Trial Demanded

**CSIRO'S OPPOSITION TO REQUEST BY DEFENDANTS ACCTON TECHNOLOGY
CORPORATION, 3 COM CORPORATION, SMC NETWORKS, INC. AND D-LINK
SYSTEMS, INC.'S PETITION FOR A LETTER OF REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE**

Accton Technology Corporation, 3 Com Corporation, SMC Networks, Inc., and D-Link Systems, Inc. (hereafter “Network Defendants”) request the assistance of this Court to continue the deposition of Dr. David Skellern. They do so apparently without the support of all of the defendants in this action (Case No. 6:06-CV-550 (LED)) or the support of the accused infringers in the three related cases, Case No. 6:06-CV-551 (LED), Case No. 6:06-CV-549 (LED) and Case No. 6:07-CV- 204 (LED).

Dr. David Skellern is not and never has been a CSIRO employee. Rather, he is a third party witness. He is also the Chief Executive Officer of National ICT Australia (“NICTA”). NICTA is a national organization 60% funded by the Australian Government through the Department of Broadband, Communications and the Digital Economy (DBCDE) and the Australian Research Council (ARC), with the objective of conducting world-class research in information and communications technology.

Despite his significant responsibilities and demanding schedule, Dr. Skellern graciously made himself available for deposition in Sydney, Australia, on October 24, 2007. His deposition commenced at 9:09 am and did not conclude until 5:42 pm. The transcript was 287 pages long. He was directly examined by four different attorneys representing various of the defendants; Messrs. Levy, Shelton, Vasquez and Lam.

The present petition comes from Mr. Vasquez, who apparently feels that he was provided with insufficient time to ask his questions. However, how the various defendants chose to allocate their time was a matter for their discretion. CSIRO would agree that the deposition was not efficiently conducted, and that a great amount of time on the record was wasted, for example, in fishing expeditions such as that concerning a theory the Dr. Skellern was an omitted inventor, as well as in putting to him the sort of theoretical questions that are proper for an expert witness but not a fact witness.¹ But Defendants' choice to waste both their time and Dr. Skellern's time in the deposition is no basis for subjecting Dr. Skellern to a second day of deposition. The Network Defendants have offered no reason why all the subject areas listed in their petition could not have been thoroughly explored during the full day Dr. Skellern was deposed.

The Court's Discovery Order in this action provides that: "No single deposition of any one witness can exceed two consecutive business days, except by mutual agreement." The Network Defendants ignore that Order by seeking a second deposition nearly a year after the first. CSIRO understands that Dr. Skellern does not wish to be subjected to a second deposition,

¹ CSIRO would be happy to provide the Court with all or selected portions of the transcript of the deposition if the Court should wish to confirm these points for itself.

and the Network Defendants have failed to show a single relevant question that they could not have asked during his first deposition. The Court should deny the petition.

DATED: September 2, 2008

Respectfully submitted,

By:/s/ Gary H. Ritchey

Daniel J. Furniss
CA State Bar No. 73531
djf@townsend.com
Gary H. Ritchey
CA State Bar No. 136209
ghritchey@townsend.com
TOWNSEND AND TOWNSEND AND CREW LLP
379 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 326-2400
Facsimile: (650) 326-2422

S. Calvin Capshaw
State Bar No. 038957003783900
E-mail: ccapshaw@capshawlaw.com
CAPSHAW DERIEUX, LLP
Energy Centre
1127 Judson Road, Suite 220
P. O. Box 3999 (75606-3999)
Longview, Texas 75601-5157
Direct Dial: (903) 233-4816
Telephone: (903) 236-9800
Facsimile: (903) 236-8787

Attorneys for Plaintiff/Defendant
COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH ORGANISATION

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 2nd day of September 2008, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Gary H. Ritchey

Gary H. Ritchey